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Trustee for the consolidated SIPA Liquidation of
Bernard L. Madoff Investment Securities LLC
and Bernard L. Madoff*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

Adv. Pro. No. 08-1789 (BRL)

SIPA Liquidation

(Substantively Consolidated)

**APPELLEE'S COUNTER-STATEMENT OF ISSUES AND
COUNTER-DESIGNATION OF RECORD WITH RESPECT TO ADE O. OGUNJOBI,
TOKS, INC. AND ITS WHOLLY-OWNED SUBSIDIARIES' DESIGNATION OF
ITEMS TO BE INCLUDED IN THE RECORD AND STATEMENT OF ISSUES**

Pursuant to Rule 8006 of the Federal Rules of Bankruptcy Procedure, Appellee Irving H. Picard (“Trustee”), trustee for the substantively consolidated liquidation of Bernard L. Madoff Investment Securities LLC (“BLMIS”) under the Securities Investor Protection Act, 15 U.S.C. § 78aaa et seq., and the estate of Bernard Madoff individually, hereby submits the following counter-designation of additional items to be included in the record on appeal, and counter-statement of the issue on appeal, in connection with the appeal by Appellants Ade O. Ogunjobi, Toks, Inc. and its Wholly-owned subsidiaries (collectively, the “Appellants”) from the minute order denying the Appellants’ motion to intervene in this matter, entered on June 2, 2009, by the United States Bankruptcy Court for the Southern District of New York (Lifland, J)(docket# 234), and respectfully submits as follows:

COUNTER-DESIGNATION OF RECORD

The Trustee hereby counter-designates the following items, annexed hereto as exhibits numbered 1 through 7, to be included in the record on appeal:

<u>Exhibit No.</u>	<u>Docket No.</u>	<u>Description</u>
1	Dk. # 4 in Case No. CIV 08-10791 (SDNY)	Protective Decree entered by the United States District Court for the Southern District of New York on December 15, 2008.
2	Dk.# 8 in Case No. CIV 08-10791 (SDNY)	Order on Consent Imposing Preliminary Injunction, Freezing Assets and Granting Other Relief Against Defendants entered by the United States District Court for the Southern District of New York on December 18, 2008.
3	Dk.# 252	Consent Order Substantively Consolidating the Estate of Bernard L. Madoff into the SIPA Proceeding of Bernard L Madoff Investment Securities LLC entered by the United States Bankruptcy Court on June 9, 2009.
4	Dk.# 212	Objection of Irving H. Picard to Motion of Ade O. Ogunjobi and Toks, Inc., <u>et al.</u> for Intervention Pursuant to Fed.R.Civ.P. 24, dated May 20, 2009.

5	Dk.# 229	Objection of Securities Investor Protection Corporation to Motion of Ade O. Ogunjobi and Toks, Inc., <u>et al.</u> , for Intervention Pursuant to Fed.R.Civ.P. 24, dated May 27, 2009.
6	Dk.# 234	Minute Order denying Appellants' motion for intervention entered by the United States Bankruptcy Court for the Southern District of New York on June 2, 2009.
7	Dk.# 258	Transcript of Hearing on Appellants' motion for intervention held on June 2, 2009.

COUNTER-STATEMENT OF ISSUE ON APPEAL

The Trustee hereby submits the following counter-statement of the issue on appeal:

Did the Bankruptcy Court err in denying the Appellants' motion for intervention dated April 22, 2009, based on findings that the Appellants have no basis for either mandatory or permissive intervention under Federal Rule of Civil Procedure 24, including that the Appellants have no financial interest in the funds collected by the Trustee, that Appellants apparently have no assets, and that Appellants have shown no reasonable basis that they could complete the tender offer they proposed?

Dated: New York, New York
June 18, 2009

Respectfully submitted,

s/Keith R. Murphy
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